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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 AUDREY FOBER, on behalf of herself and) Case No.
16 all others similarly situated,)
17 Plaintiff,)
18 vs.)
19 MANAGEMENT AND TECHNOLOGY)
20 CONSULTANTS, L.L.C., and DOES 1)
21 through 10, inclusive, and each of them,)
22 Defendants.)
23)
24 Plaintiff, AUDREY FOBER ("Plaintiff"), on behalf of herself and all others similarly)
25 situated, alleges the following upon information and belief based upon personal knowledge:)
26)
27)
28)

29 **NATURE OF THE CASE**

30 1. Plaintiff brings this action for herself and others similarly situated seeking
31 damages and any other available legal or equitable remedies resulting from the illegal actions
32 of MANAGEMENT AND TECHNOLOGY CONSULTANTS, L.L.C. ("Defendant"), in
33 negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's cellular telephone in

1 violation of the Telephone Consumer Protection Act, *47. U.S.C. § 227 et seq.* (“TCPA”),
2 thereby invading Plaintiff’s privacy.

3 **JURISDICTION & VENUE**
4

5 2. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because Plaintiff, a resident
6 of California, seeks relief on behalf of a Class, which will result in at least one class member
7 belonging to a different state than that of Defendant, a company with its principal place of
8 business and State of Incorporation in Indiana state. Plaintiff also seeks up to \$1,500.00 in
9 damages for each call in violation of the TCPA, which, when aggregated among a proposed
10 class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
11 Therefore, both diversity jurisdiction and the damages threshold under the Class Action
12 Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.
13

14 3. Venue is proper in the United States District Court for the Central District of
15 California pursuant to *18 U.S.C. 1391(b)* and *18 U.S.C. § 1441(a)* because Defendant does
16 business within the state of California and Plaintiff resides within this District.
17

18 **PARTIES**
19

20 4. Plaintiff, AUDREY FOWER (“Plaintiff”), is a natural person residing in Orange,
21 California and is a “person” as defined by *47 U.S.C. § 153 (10)*.
22

23 5. Defendant, MANAGEMENT AND TECHNOLOGY CONSULTANTS, L.L.C.
24 (“Defendant” or “DEFENDANT”), is a marketing company and is a “person” as defined by *47*
25 *U.S.C. § 153 (10)*.
26

27 6. The above named Defendant, and its subsidiaries and agents, are collectively
28 referred to as “Defendants.” The true names and capacities of the Defendants sued herein as
DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who

therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

7. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

8. Beginning in or around June of 2015, Defendant contacted Plaintiff on her cellular telephone, 714-887-3515, in an effort to sell or solicit its services.

9. Defendant used an “automatic telephone dialing system”, as defined by 47 U.S.C. § 227(a)(1) to place its daily calls to Plaintiff seeking to sell or solicit its business services.

10. Defendant's calls constituted calls that were not for emergency purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

11. Defendant's calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to *47 U.S.C. § 227(b)(1)*.

12. Plaintiff is not a customer of Defendant's services and has never provided any personal information, including her cellular telephone number, to Defendant for any purpose whatsoever. Accordingly, Defendant never received Plaintiff's "prior express consent" to

1 receive calls using an automatic telephone dialing system or an artificial or prerecorded voice
2 on her cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

3 **CLASS ALLEGATIONS**
4

5 13. Plaintiff brings this action on behalf of herself and all others similarly situated,
6 as a member of the proposed class (hereafter “The Class”) defined as follows:
7

8 All persons within the United States who received any telephone
9 calls from Defendant to said person’s cellular telephone made
10 through the use of any automatic telephone dialing system or an
11 artificial or prerecorded voice and such person had not previously
12 consented to receiving such calls within the four years prior to
13 the filing of this Complaint

14 14. Plaintiff represents, and is a member of, The Class, consisting of All persons
15 within the United States who received any telephone calls from Defendant to said person’s
16 cellular telephone made through the use of any automatic telephone dialing system or an
17 artificial or prerecorded voice and such person had not previously not provided their cellular
18 telephone number to Defendant within the four years prior to the filing of this Complaint.

19 15. Defendant, its employees and agents are excluded from The Class. Plaintiff
20 does not know the number of members in The Class, but believes the Class members number in
21 the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in
22 the expeditious litigation of the matter.

23 16. The Class is so numerous that the individual joinder of all of its members is
24 impractical. While the exact number and identities of The Class members are unknown to
25 Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is
26 informed and believes and thereon alleges that The Class includes thousands of members.
27 Plaintiff alleges that The Class members may be ascertained by the records maintained by
28

1 Defendant.

2 17. Plaintiff and members of The Class were harmed by the acts of Defendant in at
3 least the following ways: Defendant illegally contacted Plaintiff and Class members via their
4 cellular telephones thereby causing Plaintiff and Class members to incur certain charges or
5 reduced telephone time for which Plaintiff and Class members had previously paid by having to
6 retrieve or administer messages left by Defendant during those illegal calls, and invading the
7 privacy of said Plaintiff and Class members.

8 18. Common questions of fact and law exist as to all members of The Class which
9 predominate over any questions affecting only individual members of The Class. These
10 common legal and factual questions, which do not vary between Class members, and which
11 may be determined without reference to the individual circumstances of any Class members,
12 include, but are not limited to, the following:

13 a. Whether, within the four years prior to the filing of this Complaint,
14 Defendant made any call (other than a call made for emergency purposes
15 or made with the prior express consent of the called party) to a Class
16 member using any automatic telephone dialing system or any artificial or
17 prerecorded voice to any telephone number assigned to a cellular
18 telephone service;

19 b. Whether Plaintiff and the Class members were damages thereby, and the
20 extent of damages for such violation; and

21 c. Whether Defendant should be enjoined from engaging in such conduct in
22 the future.

23 19. As a person that received numerous calls from Defendant using an automatic
24 telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express
25 consent, Plaintiff is asserting claims that are typical of The Class.

26 20. Plaintiff will fairly and adequately protect the interests of the members of The
27 Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

28 21. A class action is superior to other available methods of fair and efficient

1 adjudication of this controversy, since individual litigation of the claims of all Class members
2 is impracticable. Even if every Class member could afford individual litigation, the court
3 system could not. It would be unduly burdensome to the courts in which individual litigation
4 of numerous issues would proceed. Individualized litigation would also present the potential
5 for varying, inconsistent, or contradictory judgments and would magnify the delay and expense
6 to all parties and to the court system resulting from multiple trials of the same complex factual
7 issues. By contrast, the conduct of this action as a class action presents fewer management
8 difficulties, conserves the resources of the parties and of the court system, and protects the
9 rights of each Class member.

10
11 22. The prosecution of separate actions by individual Class members would create a
12 risk of adjudications with respect to them that would, as a practical matter, be dispositive of the
13 interests of the other Class members not parties to such adjudications or that would
14 substantially impair or impede the ability of such non-party Class members to protect their
15 interests.

16
17 23. Defendant has acted or refused to act in respects generally applicable to The
18 Class, thereby making appropriate final and injunctive relief with regard to the members of the
19 California Class as a whole.

20
21 **FIRST CAUSE OF ACTION**
22 **Negligent Violations of the Telephone Consumer Protection Act**
23 **47 U.S.C. §227 et seq.**

24
25 24. Plaintiff repeats and incorporates by reference into this cause of action the
allegations set forth above at Paragraphs 1-23.

26
27 25. The foregoing acts and omissions of Defendant constitute numerous and
28 multiple negligent violations of the TCPA, including but not limited to each and every one of

1 the above cited provisions of *47 U.S.C. § 227 et seq.*

2 26. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et seq.*,
3 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for
4 each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

5 27. Plaintiff and the Class members are also entitled to and seek injunctive relief
6 prohibiting such conduct in the future.
7

8 **SECOND CAUSE OF ACTION**
9 **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**
10 **47 U.S.C. §227 et seq.**

11 28. Plaintiff repeats and incorporates by reference into this cause of action the
12 allegations set forth above at Paragraphs 1-23.

13 29. The foregoing acts and omissions of Defendant constitute numerous and
14 multiple knowing and/or willful violations of the TCPA, including but not limited to each and
15 every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

16 30. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227*
17 *et seq.*, Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory
18 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. §*
19 *227(b)(3)(C)*.

21 31. Plaintiff and the Class members are also entitled to and seek injunctive relief
22 prohibiting such conduct in the future.
23

24 ///

25 ///

26 ///

27 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act 47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B); and
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act
47 U.S.C. §227 et seq.**

- As a result of Defendant's willful and/or knowing violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to *47 U.S.C. §227(b)(3)(B)* and *47 U.S.C. §227(b)(3)(C)*; and
- Any and all other relief that the Court deems just and proper.

Respectfully Submitted this 19th Day of October, 2015.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s Todd M. Friedman

Todd M. Friedman

Law Offices of Todd M. Friedman

Attorney for Plaintiff